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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO 200/2022, CM APPL. 32981/2022 & CM APPL. 54255/2022**  
**VED PRAKASH** .....Appellant  
Through: Mr. Venkta Subramoniam T.R.  
Advocate.  
versus

**NEERAJ SAXENA** .....Respondent  
Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**  
% **27.02.2025**

1. No one has appeared for the respondent when the matter is called.
2. Having heard the learned counsel for the appellant and on perusal of the record, it is manifest that a short issue of law is involved in the present matter, thus, the present appeal under Order XLIII Rule (1)(r) of the Code of Civil Procedure, 1908 (hereinafter referred as “CPC”) can be conveniently disposed of in the absence of the respondent.
3. Shorn of unnecessary details, the case of the appellant/plaintiff is that being the owner of the subject property, the same was let out to the respondent commencing from 01.11.2017 for which a registered lease deed was subsequently executed on 07.02.2018 for a period of 36 months, initially at a monthly rent of ₹70,000/- per month with a provision for 10% increase every year.
4. It is stated by the appellant/plaintiff that the lease expired by efflux of time w.e.f. 31.10.2020 and the respondent is in arrears of rent



w.e.f. March, 2020. Since evidently, the respondent also failed to vacate the premises despite service of legal notice dated 13.10.2020, a suit was instituted seeking reliefs in the nature of eviction of the respondent from the said property besides recovery of arrears of rent, mesne profits, damages including *pendent elite* and future interest.

5. It is the case of the appellant/plaintiff that during the pendency of the said suit, he filed an application under Order XII Rule 6 CPC as well as a separate application under Order XXXIX Rule 10 CPC, both of which came to be dismissed by the learned Trial Court vide impugned order dated 26.02.2022.

6. It is stated that in so far as the latter application is concerned, the appellant/plaintiff has sought relief in the nature of a direction to the respondent to make payment of outstanding arrears of rent as well as make payment of rent till the time he vacates the premises in his favour.

7. It is brought on the record that the appellant/plaintiff filed a Civil Revision Petition bearing CRP 124/2022 before this Court, which already stands dismissed by a Co-ordinate Bench of this Court vide order dated 18.09.2024.

8. On a bare perusal of the impugned order dated 26.02.2022, it appears that the learned Trial Court failed to address the issues that have been raised in the application under Order XXXIX Rule 10 CPC and it primarily went by the proposition of law with regard to Order XII Rule 6 CPC. It is also pertinent to mention that in the interregnum, the respondent also filed a civil suit bearing CS SCJ 2428/2022 titled “*Sh. Neeraj Saxena v. Ved Prakash*” seeking a declaration that the lease agreement dated 07.02.2018 had been executed under coercion, the plaint of which already stands rejected under Order VII Rule 11(d)



CPC for the failure to supply cause of action as well as for being barred by limitation *vide* order dated 28.01.2025.

9. In view of the aforesaid backdrop, the admitted position is that appellant/plaintiff is the owner and landlord of the premises in question. The subject property is of commercial nature and had been let out to the respondent w.e.f. 01.11.2017 in terms of the registered lease deed which was later executed on 07.02.2018.

10. It is manifest that the respondent has failed to vacate the tenanted premises despite service of the legal notice dated 13.10.2020. The appellant/plaintiff, being the owner as well as the landlord of the subject property, is entitled to reap the benefits of his property and derive rent plus damages/*mesne* profits for the wrongful occupation of the said premises by the respondent.

11. A perusal of the recital in the lease agreement dated 07.02.2018 would show that the rent was reserved @ ₹ 70,000/- per month commencing from 01.11.2017 till 31.10.2020; and *vide* clause (1) of the aforesaid agreement, it was stipulated as under:-

“1. To pay Rs.70,000/- per month as rent in advance every month for which it is due. The amount of rent shall be increased by 15% after the expiry of twelve months from the date of commencement of tenancy under this agreement. It shall again be increased by 15% at the end of twenty four months from the date of commencement of this agreement. Further renewal of the rent agreement, if any, on the expiry of thirty six months will be on mutually agreed terms and conditions. However, both the parties have the option to get the property vacated by giving one month notice to the other party after the expiry of three months from the date of the expiry of this tenancy agreement.”

| Rent        | Period                   |
|-------------|--------------------------|
| Rs.70,000/- | 01.11.2017 to 31.10.2018 |
| Rs.80,500/- | 01.11.2018 to 31.10.2019 |
| Rs.92,575/- | 01.11.2019 to 31.10.2020 |



12. On being asked, the learned counsel for the appellant/plaintiff submits that the trial is still pending before the learned Trial Court and the same is coming up for hearing on 03.04.2025.

13. Undoubtedly, there exists no legal impediment in the way of the appellant/plaintiff so as to be denied his claim towards arrears of rent as well as for payment of user/occupation charges, until such time as the premises is vacated.

14. Accordingly, the present appeal is hereby allowed, and the respondent is directed to pay arrears of rent @ ₹92,575/- from 01.03.2020 to 31.10.2020, and thereafter, at the rate of ₹1,00,000/- for each successive English calendar month, commencing from 01.11.2020, to be paid by the 10th of each subsequent month.

15. In the event the respondent fails to tender or pay the aforementioned amount within a period of four weeks from today to the appellant/plaintiff, the right of the respondent to lead evidence before the learned trial Court shall stand closed. This direction for payment of rent is without prejudice to the rights of the appellant/plaintiff to seek further enhancement of rent in terms of the market rental value of the property and without prejudice to his right to seek interest.

16. The appeal is disposed of accordingly. A copy of this order be sent to the learned Trial Court for information and necessary action.

**DHARMESH SHARMA, J.**

**FEBRUARY 27, 2025/pkv**